

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRITZ WUTHRICH,

No. C-14-0871 EMC

Appellant,

v.

**ORDER DENYING APPELLEE'S EX
PARTE APPLICATION FOR ORDER
DISMISSING APPEAL; AND ORDER
TO SHOW CAUSE**

AMER SPORTS WINTER & OUTDOOR
COMPANY,

(Docket No. 14)

Appellee.

Previously, the Court denied Appellee Amer Sports Winter & Outdoor Company's motion to dismiss for lack of prosecution and ordered Appellant Fritz Wuthrich to file his opening brief by January 23, 2015, at 5:00 p.m. *See* Docket No. 11 (order). After Mr. Wuthrich failed to file an opening brief, Amer Sports filed – on January 27, 2015 – the pending application for an order dismissing the appeal. Approximately three hours later, Mr. Wuthrich – or more specifically, his counsel, Ruth Elin Auerbach – filed his opening brief.

Amer Sports's application for an order dismissing the appeal is hereby **DENIED**. Although the opening brief was not timely filed, there has been no material prejudice to Amer Sports as the brief was only two court days late.

That being said, the Court does not condone the tardiness of the brief, particularly given the history in this case, in which there was a failure to prosecute this case for almost a year. Accordingly, the Court hereby orders Ms. Auerbach to show cause as to why she personally (and not her client, Mr. Wuthrich) should not be sanctioned for her failure to comply with the Court's order, requiring that the opening brief be filed by January 23. At this juncture, potential sanctions include

1 Ms. Auerbach (and not her client, Mr. Wuthrich) having to pay personally the attorney's fees
2 incurred by Amer Sports in filing the pending application for relief. **Ms. Auerbach's response to**
3 **this order to show cause shall be filed no later than February 5, 2015.**


4 **In addition, the Court hereby orders Ms. Auerbach to personally serve a copy of this**
5 **order on her client, Mr. Wuthrich, by February 2, 2015. On the same day, Ms. Auerbach shall**
6 **file a certificate of service, establishing that she served a copy of this order on her client.**

7 **Finally, Ms. Auerbach shall file by February 2, 2015 a certificate of service, establishing**
8 **that she served a copy of the Court's order of January 16, 2015, *see* Docket No. 11 (order), on**
9 **her client, as the Court previously ordered.**

10 This order disposes of Docket No. 14.

11
12 IT IS SO ORDERED.

13
14 Dated: January 29, 2015

15
16 
EDWARD M. CHEN
United States District Judge